IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.366 OF 2003

IN

SUMMARY SUIT NO.672 OF 2003

Rajesh M.Kapadia .. Plaintiff

versus

M/s Jignesh Corpn. .. Defendants

...

Mr. R.Shah i/b M/s Raval Shah for Plaintiff.

Ms.Rita Bhatia for Defendant.

CORAM : D.G. KARNIK, J

DATED : 14th February, 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in a a suit filed by them for recovery of money kept by him as a fixed deposit with the defendant no. 1 of which the defendant nos. 2 to 6 are the partners. The plaintiff kept a sum of Rs.3,59,502.37 with the defendants as a fixed deposit for which the defendant

no. 1 issued a receipt dated 1st April, 2001. The money was repayable on 30th September, 2002. On maturity of the fixed deposit the plaintiff demanded the payment but the defendant failed and neglected to pay. Hence, the plaintiff has filed this suit.

2. The plaintiff Mr.Rajesh has filed this suit in the capacity as a karta of Hindu Undivided family. It is defence of the defendants that Mr. Rajesh and defendant nos. 2 to 5 were partners in several other businesses and certain sums were due by Mr. Rajesh and his joint family to the defendants. It is further case of the defendants that Mr. Rajesh is the executive director of M/s Gleitlager (India) Limited (for short GIL) which owes a large sum of money to the defendants. It was agreed between the plaintiff and the defendants that only after money is repaid by GIL the defendants would repay the money to the plaintiff.

3. Learned counsel for the defendants strongly relies upon the decision of the apex court in Mrs Raj Duggal vs Ramesh Kumar Bansal reported in AIR 1990 SUPREME COURT 2218. In the said case, the Supreme Court has held that while considering the question of leave, the test is to see whether the defence raises a real issue

and not a sham one in the sense that if the facts alleged by the defendant are established whether there would be a good or even a plausible defence. In the present case the facts alleged by the defendants are that there was an agreement between the parties that money would be repaid only after GIL pays money to the defendants. If this is established, the defendants would have plausible defence to defend the suit. In the circumstances, the defendants are entitled for leave to defend the suit.

4. The facts in Summons for Judgment No.364 of 2003 in Summary Suit No. 657 of 2003 are distinguishable. In the said case the agreement was alleged to be executed by Mr. Rajesh whereas the plaintiff therein was his son and was not party to the agreement. In the circumstances, the fact that no leave was granted therein would not relevant for the purpose of granting leave in this case.

5. Accordingly, the defendants are granted unconditional leave to defend the suit. The suit shall stand transferred to the list of commercial causes. The defendants shall file written statement within a period of one month.

D.G.KARNIK, J